

STATE OF NEW JERSEY
 OFFICE OF THE ATTORNEY GENERAL
 DEPARTMENT OF LAW PUBLIC SAFETY
 DIVISION ON CIVIL RIGHTS
 DCR DOCKET NO. HJ06BT-66306

Alexis Fontanez,)
)
 Complainant,)
)
 v.)
)
 Bernice Garcia and Global Dabu Realty,)
)
 Respondents.)

Administrative Action

FINDING OF PROBABLE CAUSE

On February 2, 2017, Alexis Fontanez (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that on or about December 15, 2016, Bernice Garcia and Global Dabu Realty (Respondents) refused to rent an apartment to her because of her familial status, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. The DCR investigation found as follows.

Summary of Investigation

Garcia owns a two-family home at 16 Jones Street, Jersey City, which she uses as a rental property. In December 2016, she listed the second floor three-bedroom apartment for rent for \$1,500/month. Antonio Dabu of Global Dabu Realty in Jersey City was the broker of record.

On December 13, 2016, a Global Dabu Realty agent, Luis Soto, showed the apartment to Complainant. That day, Complainant and her partner, Thomas Baldwin, submitted a rental application and paid a \$1,000 deposit on behalf of themselves and their three children (a 5 year-old son, 4 year-old daughter, and infant daughter). Complainant stated that a few days later, Soto called her and said that the owner did not want to rent to her because there would be “too many people” in the apartment. See Verified Complaint, Feb. 2, 2017, ¶¶ 5 & 6.

Respondents denied the allegations of discrimination in their entirety. Dabu did not expressly deny that his agent made the comment about “too many people.” However, he sought to clarify that the collective concern of the broker and landlord was not the number of Complainant’s children, but their ages. Dabu wrote in part:

Please be advised that Global Dabu Realty and the owner’s intention was not to discriminate against Ms. Fontanez because of the size of her family but mainly the concern over her 4, 5 years old children and their 2 month old baby in ascending and descending the steep stairs of the property. We fear the potential accident

that's looming to happen while these kids are unable to maneuver these long flights of stairs. We care more about everybody's safety than the commission we can get on this deal . . . We decided to rent the apartment to a family with older children. We regret the misunderstanding and this is the only reason why Ms. Fontanez was rejected as a tenant.

See Letter from A. Dabu to DCR, Feb. 21, 2017. In support of its assertion that the apartment might not be safe for young children, Dabu Realty produced a photograph of a 14-step brick staircase leading to the front door of the house.

The landlord provided a similar version of events. Garcia told DCR that she and Antonio Dabu discussed Complainant's application and he warned her that because of the ages of Complainant's children, Garcia could "run into problems" in the future. They agreed to look for another tenant. Garcia told the DCR investigator that winter conditions could make the steps dangerous and the final decision was about safety.

Respondents subsequently rented the apartment to a couple with two children, ages six and eight.

Analysis

At the conclusion of an investigation, the DCR Director is required to determine whether "probable cause exists to credit the allegations of the verified complaint." See N.J.A.C. 13:4-10.2. "Probable cause" for purposes of this analysis means a "reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] has been violated." Ibid. If the Director determines that probable cause exists, then the complaint will proceed to a hearing on the merits. See N.J.A.C. 13:4-11.1(b).

A finding of probable cause is not an adjudication on the merits. It is merely an initial "culling-out process" in which the Director makes a threshold determination of "whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits." Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. den., 498 U.S. 1073. Thus, the "quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits." Ibid.

The Legislature has directed the LAD "shall be liberally construed in combination with other protections available under the laws of this State." N.J.S.A. 10:5-3; Montells v. Haynes, 133 N.J. 282, 298 (1993).

The LAD prohibits housing discrimination based on “familial status,” which it defines as follows:

“Familial status” means being the natural parent of a child, the adoptive parent of a child, the resource family parent of a child, having a “parent and child relationship” with a child as defined by State law, or having sole or joint legal or physical custody, care, guardianship, or visitation with a child, or any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

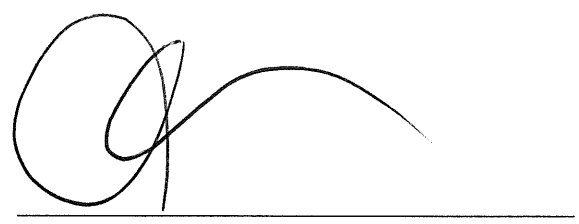
See N.J.S.A. 10:5-51l. In addition to prohibiting the outright denial of housing to parents because they have children under 18, the LAD makes it unlawful for housing providers to impose special requirements or conditions on people with children. For example, landlords may not steer people with children to live in a certain portion of a complex, or place unreasonable restrictions on the total number of persons who may reside in a dwelling. N.J.S.A. 10:5-12g & h; see e.g., United States v. Garden Homes Mgmt. Corp., 156 F. Supp.2d 413 (D.N.J. 2001) (finding that preference of renting only ground floor apartments to families with small children amounted to familial status discrimination).

The LAD’s ban on “familial status” discrimination is designed to protect the “natural parent . . . [or] adoptive parent of a child.” See N.J.S.A. 10:5-51l (emphasis added). It recognizes that a mother should not be penalized simply because she has young children. In this case, it appears clear that but for the existence of Complainant’s three young children, she would have been allowed to rent the apartment. The fact that Respondents rented the unit to another family with children does not defeat Complainant’s specific allegation that she was the victim of familial status discrimination. By way of analogy, if a landlord rejected an applicant because she used a wheelchair, the fact that the landlord subsequently accepted an applicant who used a walker does not defeat the first applicant’s claim of disability discrimination.

And a housing provider’s concern for the safety of children—no matter how well-intentioned—does not create an exemption from fair housing requirements. U.S. v. Grishman, 818 F.Supp. 21 (D. Me. 1993) (landlord’s rejection of a family based on perception that property’s natural and man-made features posed serious danger to the children amounted to unlawful discrimination). There is no “unsafe for children’ exemption” to familial status discrimination. See Carole W. Wilson, HUD, Fair Housing Act Enforcement: Safety Issues as Defense to Familial Status Discrimination, Legal Op. GME-0010, 9.206, Aug. 6, 1992 (“[T]here is no support for concluding that it is permissible to exclude . . . families with children from dwellings on upper floors of a high-rise, based on the assertion that such dwellings present a health or safety risk to such persons.”); see also Fair Hous. Cong. v. Weber, 993 F. Supp. 1286, 1292 (C.D. Cal. 1997) (“As a general rule, safety judgments are for informed parents to make, not landlords.”).

In light of the above, and for purposes of this preliminary disposition only, the Director finds that the fact that Complainant had children under 18 years old was the actual cause of her inability to obtain the Jones Street apartment. Accordingly, the Director finds that this matter should “proceed to the next step on the road to an adjudication on the merits.” Frank, 228 N.J. Super. at 56. Should this matter not be resolved during the required conciliation process, N.J.S.A. 10:5-14, the matter will proceed to the Office of Administrative Law for an evidentiary hearing where an administrative law judge will hear live testimony and evaluate the evidence. N.J.A.C. 13:4-11.1(b).

DATE: 4-11-18



Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS